

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS**

**Call to Order:** By **CHAIRMAN MACK COLE**, on January 18, 2001 at 3:10 P.M., in Room 317-C Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Mack Cole, Chairman (R)  
Sen. Royal Johnson, Vice Chairman (R)  
Sen. Steve Doherty (D)  
Sen. Alvin Ellis Jr. (R)  
Sen. Mike Halligan (D)  
Sen. Bea McCarthy (D)  
Sen. Walter McNutt (R)  
Sen. Don Ryan (D)  
Sen. Corey Stapleton (R)  
Sen. Mike Taylor (R)  
Sen. Tom Zook (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Todd Everts, Legislative Branch  
Misti Pilster, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 57; SB 234, 1/16/2001  
Executive Action: SB 56

#### **HEARING ON SB 57**

**Sponsor:** SENATOR ROYAL JOHNSON, SD 5, Billings

**Proponents:** Bob Anderson, Public Service Commission  
Greg Groepper, Energy Share  
Julie Ippolito, Human Resource Development Council

**Jim Nolan, Public Health and Human Services**  
**Deb Martin Young, Montana Power Company**  
**Patrick Judge, Montana Environmental Information**  
**Center**  
**Matthew Leow, Montana Public Interest Research Group**

**Opponents:** None

**Opening Statement by Sponsor:**

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**SENATOR ROYAL JOHNSON, SD 5, Billings,** stated that the purpose of the bill is to extend the sunset of the Universal Systems Benefits Charge (USBC) by two years to 2005. This bill is important for clarity and to keep things current, as well as for people who depend on those benefits.

**Proponents' Testimony:**

**Bob Anderson, Public Service Commission,** said he supports SB 57.

**Greg Groepper, Energy Share,** submitted written testimony and charts, **EXHIBIT(ens14a01), EXHIBIT(ens14a02), EXHIBIT(ens14a03), EXHIBIT(ens14a04).**

**Julie Ippolito, Human Resource Development Council,** voiced her support of the bill.

**Jim Nolan, Public Health and Human Services,** noted that Montana Power Company (MPC) contracts with his group for about \$1 million per year to weatherize people's homes. In consultation, they offer discounts to low income people. According to the last census, 137,000 Montanans are below the poverty line. The extension of the USBC will go a long way to help people.

**Deb Martin Young, Montana Power Company,** exclaimed that with the package of SB 390 and the implementation of the USBC, MPC has been able to sustain their conservation programs, expand low income programs, and add renewable resource programs to the benefit of customers. Extending the funding period beyond July 2003 is important. MPC collects approximately \$8.6 million in electric USBC from customers. In addition, nearly \$1.5 million is collected for gas and personal assistance.

**Patrick Judge, Montana Environmental Information Center,** submitted written testimony, **EXHIBIT(ens14a05).**

**Matthew Leow, Montana Public Interest Research Group**, urged the committee's support.

**Opponents' Testimony: None**

**Informational Testimony:**

**Matt Brainard, Public Service Commission**, explained that there are a number of entities seeking exemption, as well as a number of bills that would seek an increase in charges.

**Questions from Committee Members and Responses:**

**SENATOR COREY STAPLETON** wondered if the legislation changed a certain requirement. **SENATOR JOHNSON** replied that it did not.

**SENATOR TOM ZOOK** wanted a comment from the sponsor on the charges and how constituents are reacting to them. **SENATOR JOHNSON** replied that a lot of people were surprised by exactly what was on their bill. The money doesn't really come from the utility, but rather the customer's bill. This is, in fact, a tax or fee. **SENATOR ZOOK** mentioned a statement by **Jim Nolan** that a 15% discount is given from MPC.

**SENATOR ZOOK** further pressed about the value of building solar homes and a previously mentioned web-site funded by these funds. **SENATOR JOHNSON** referred to the CHIP program and was not familiar with the web-site. **SENATOR ZOOK** wished for something in the bill that would tighten down what the funds are used for. **SENATOR JOHNSON** didn't see a better vehicle than this bill and thought it would complicate the legislation too much.

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**SENATOR MIKE TAYLOR** asked what percentage of the money collected goes towards administration and to the public. **Greg Groepper** declared that there is no statutory requirement limiting the amount of administration that is charged to the programs. Every utility company that collects the USBC has to make a report to the Department of Revenue (DOR) on an annual basis. Last year, the administrative rate was 10%. The program is supplemented with approximately \$180,000 from citizens and another \$160,000 from MPC customers. **SENATOR TAYLOR** noticed 10% in a pie graph and wondered how many dollars that would be. **Mr. Groepper** elaborated that it is close to \$1 million, including their endowment. Their administration, which includes a part time director and an office person, is under \$96,000.

**SENATOR ALVIN ELLIS** was curious as to what all the funds go towards. **Mr. Groepper** told the committee that the report handed out only included things done by Energy Share. Out of every dollar, 17 cents, by law, is required to go to low income and 83 cents can go towards conservation and renewables. Different companies spend their money differently. MPC spends about 21 cents on low income and Montana Dakota Utilities (MDU) spends more than that. **SENATOR ELLIS** then stated that the way the funds are delegated is utility specific. **Mr. Groepper** professed that every bill would be a little different. It is not required to distinguish how the USBC will be used on a bill. However, companies are required to file a report to the DOR and the Transition Advisory staff as to how their money was spent.

**SENATOR HALLIGAN** asked for an explanation of solar homes and costs. **Deb Martin Young** explained, from their 1999 energy report, that MPC spent \$7.8 million for various programs. They followed SB 390 and rules that were passed by the DOR on USBC. An advisory committee was established consisting of low income advocates, conservation and renewable representatives, large customers, government representatives, and commercial customers. A rebate is offered to commercial customers who install energy efficient lighting and incentives are given for those who do holistic energy studies on their facilities. MPC participates with the Northwest Energy Efficiency Alliance to form new, efficient technology and practices. In addition, they now have 42 net metered systems as a result of legislation in conjunction with the USBC. There are also research and development projects tied to market transformation as well as support of Energy Share. **SENATOR HALLIGAN** was curious as to the criteria for choosing someone to receive solar panels. **Ms. Martin Young** professed that it's not so much personal income, but rather the right conditions that are the most important factors. There is a large cross section that should be evaluated, such as location, application potential, and demonstration potential. There are also specific low income projects.

**SENATOR STAPLETON** wondered if there was other legislation that could be approved or improved upon. **Matt Brainard** explained that there was a bill presented in the House Energy Committee to provide exemptions for certain organizations. There was also a bill being drafted to raise the amount to 3.4%.

**SENATOR WALT MCNUTT** mentioned a previous statement made about a website being funding by USBC. He wanted to know how the money got there and how much money was going to areas that it wasn't designed for. **Patrick Judge** elaborated that the website gives a summary of the activities going on and is an attempt at accountability for renewable energy. He believed the money came

from MPC as a grant to the National Center for Appropriate Technology.

**SENATOR DON RYAN** desired to know how much of the money from the Low Income Energy Assistance Program (LIEAP) was utilized and what the dollar figure was. **Jim Nolan** stated that last year's grant was \$7 million. Of that, 10% went to administration, \$5.5 million went towards power bills, and the remainder went to weatherization. **SENATOR RYAN** questioned if that was the maximum allowed money Montana could receive and if there was complete utilization of all federal money available. **Mr. Nolan** responded that was correct. He also purported that there are approximately 60,000 eligible households and only about 14,000 applied last year. The more people that apply, the less money there is to give each individual household. Yet, every USBC dollar given in the form of a discount frees up the same amount of federal dollars.

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**Closing by Sponsor:**

**SENATOR JOHNSON** noted that the bill can stand on it's own and didn't want it to be put in with other legislation. He thought that the 2.4% should be left alone and that the effects of deregulation should be sorted out.

**HEARING ON SB 234**

**Sponsor:** **SENATOR JON TESTER, SD 45, Big Sandy**

**Proponents:** **Allen Thiessen, Montana Electric Cooperatives Assn.**  
**Ron Ostberg, Montana Independent Telecommunications**  
**Systems**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**SENATOR JON TESTER, SD 45, Big Sandy,** exclaimed that the purpose of the legislation is to establish standards of conduct and add personal liability protections for trustees and officers of electric and telephone cooperatives. This is accomplished by amending the electric and telephone cooperatives enabling laws. Montana's current cooperative enabling law, as enacted 61 years ago, contains no standard of conduct or personal liability protections for the trustees and officers of cooperatives.

**Proponents' Testimony:**

**Allen Thiessen, Montana Electric Cooperatives Assn.**, submitted written testimony, **EXHIBIT(ens14a06)**.

**Ron Ostberg, Montana Independent Telecommunications Systems**, relayed a personal story of serving on various cooperative boards and urged a "do pass" recommendation from the committee.

**Opponents' Testimony: None**

**Questions from Committee Members and Responses:**

**SENATOR HALLIGAN** wondered about suing and indemnification. **Dave Wheelihan, Montana Electric Cooperatives Assn.**, replied that the indemnification provisions were evaluated as well as the director's liability, protections, and standards from the Business Corporations Act. When drafted, that piece was lifted verbatim from 35-1-454 of the existing Business Corporations Act. The appropriate wording in the indemnification, unless the cooperative articles of incorporation provides otherwise, that the trustee or officer of the cooperative is according to proceedings, may apply to the court for indemnification.

**SENATOR TAYLOR** inquired whether this legislation was a clarification of limited liability for the cooperatives and trustees. **Mr. Wheelihan** affirmed that they want to give the electric cooperatives liability protection contained in the Business Corporations Act and establish a code of conduct that they must follow.

**SENATOR STEVE DOHERTY** believed the answer to **SENATOR HALLIGAN'S** question would be that the cooperative may not want to indemnify the trustee. The trustee would then have the option, under section 6, of going to court and saying they did need indemnification and were entitled to it.

**Closing by Sponsor:**

**SENATOR TESTER** urged favorable recommendation from the committee.

**EXECUTIVE ACTION ON SB 56**

**Todd Everts** explained the amendments submitted by **SENATOR MCNUTT** and gave a brief overview of the legislation.

**SENATOR ELLIS** wanted to make sure that all the dates were consistent and that the date they were going back to was January

1, 1999. **Mr. Everts** noted that with the amendments, the retroactive applicability provision would allow the cooperatives to go back in time and make the bill apply from January 1 on for those payments made. **SENATOR ELLIS** responded that, because of the ambiguity of the law, some of the charges the cooperatives thought were ineligible, were not. **Mr. Wheelihan** cited that when they made their initial filing for the USBC for 1999, they filed with the DOR. They wanted to make sure there was no doubt that amortized and non-amortized credits can be counted going forward.

**SENATOR TAYLOR** wanted clarification as to large customers. **Mr. Everts** proclaimed that for USB program purposes, large customers are those with monthly load averages greater than 1,000 kilowatt demand in the previous calendar year. **SENATOR TAYLOR** wished for an example of a large customer. **Mr. Everts** noted Smurfit-Stone Container. Large customers are separated out as a unique class of customers for USB purposes. They can self direct their monies to low income and renewables.

**SENATOR ELLIS** inquired as to the rationale for separating the large customers out. **Doug Hardy, Montana Electric Cooperatives Assn.**, professed that the financial impacts vary for industrial customers and home owners.

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**SENATOR HALLIGAN** voiced concerns that large customers weren't present at the hearing and that the amendments went beyond the scope and title of the bill. **Mr. Everts** contended that large customers have basically the same language applying to them on page 3, line 10 with the utilities. Different references are being talked about, although the same expenditures are being dealt with.

**SENATOR ZOOK** explained that with the definition, his ranch would fit the large customer category. At his ranch headquarters, they use 1,000 kilowatts per month easily. If their wells are added in, they run at about 1,200 kilowatts per month.

**SENATOR HALLIGAN** expressed confusion between kilowatts and kilowatt hours. **Mr. Hardy** declared that 1,000 kilowatts would be similar to 1,000 homes and perhaps 4,000 stock wells. If 1,000 kilowatts were used for a full month, that would equal 700,444 kilowatt hours per month.

**Motion/Vote:** **SENATOR MCNUTT** moved that **NUMBER 2, 3, 4, AND 6 OF AMENDMENT SB005601.ATE, EXHIBIT(ens14a07), DO PASS. Motion carried unanimously.**

**Motion:** SENATOR MCNUTT moved that SB 56 DO PASS AS AMENDED.

**Discussion:**

**Russ Trasky, DOR,** told the committee that the adoption or admission of amortized and non-amortized expenses would reduce the amount of funds available for the qualified programs allowed under HB 337. The credits are assumed correct unless there is a challenge problem. The DOR is not responsible for reviewing the credit requests or the annual reports until someone challenges the present concept.

**SENATOR JOHNSON** stated that the loss of revenue is a loss of income revenue to the DOR. **Mr. Trasky** noted that the funds are actually used to fund the USB programs. **SENATOR JOHNSON** questioned why a cooperative would set aside Universal Benefits based on their generation in the past year. **Mr. Trasky** replied that they are required to fund the program with 2.4%. If the legislation were to pass, their credits could be used to offset the 2.4%. **SENATOR JOHNSON** was curious as to how the bill would reduce the benefit to the person receiving it. **Mr. Trasky** muttered that it would reduce the amount of funds available for the qualified programs initially allowed under HB 337.

**SENATOR ELLIS** believed that there would be a loss of potential revenue if someone appealed their credit and the DOR enforced a ruling. **Mr. Trasky** reported that if those expenditures were used as credits, the amount of funds available for other credits now allowed under the bill would be reduced.

**Mr. Wheelihan** explained that he had a copy of their USB program report that was filed for the calendar year 1999 and it clearly had conservation investments made through power purchases pursuant to 69-8-402-2 subsection B. The administrative rule, which was the final rule that the DOR issued, made it less clear as to whether those purchases could be counted.

**SENATOR DOHERTY** desired to know what the amortized credits were counted against and where it goes. **Mr. Wheelihan** said that the law established a 2.4% threshold that had to be met, as well as 17% that had to be shaved off and diverted to low income. The remainder goes to conservation, renewable, and weatherization type programs. They want to be able to count previous and future investments as part of their 2.4% obligation because those programs are for conservation and renewables that represent approximately \$14 million.

**Mr. Everts** exclaimed that the 2.4% is an assessment of a certain amount of money which doesn't change.



**SENATOR MCNUTT** wanted to know what was going to happen to the rates of consumers if the cooperatives were not allowed to use amortized and non-amortized. **Mr. Wheelihan** cited that it would vary from cooperative to cooperative, but it would be an additional \$2.02 million dollars.

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**SENATOR DOHERTY** was curious as to whether \$2.02 million would be available for conservation programs that isn't available now.

**Mr. Wheelihan** explained that the cooperatives would be paying an additional \$2.02 million into the programs.

**Vote:** Motion **carried unanimously.**

**SENATOR MACK COLE** appointed **SENATOR JOHNSON** as chairman, **SENATOR RYAN**, and **SENATOR ZOOK** to a subcommittee on SB 243.

**ADJOURNMENT**

Adjournment: 5:05 P.M.

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SEN. MACK COLE, Chairman

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MISTI PILSTER, Secretary

MC/MP

**EXHIBIT (ens14aad)**